

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED CHANGES
IN THE REGULATIONS PERTAINING TO
VOLATILE ORGANIC COMPOUNDS IN THE
SAN JOAQUIN VALLEY OZONE NONATTAINMENT AREA**

Pursuant to the requirements of Government Code section 11346.8(c) and section 44 of Title 1 of the California Code of Regulations (CCR), the Department of Pesticide Regulation (DPR) is providing notice of changes made to the proposed text of sections 6452, 6558, 6577, 6880, 6883, and 6884 of Title 3, CCR. These changes are in response for reasons stated below. The public comment period on the originally proposed regulatory action closed on June 7, 2012. The Director finds that the modifications are sufficiently related to the original text of the proposed action. The modified text is being made available to the public for 15 days, during which written comments on the modifications will be received as provided in Government Code section 11346.8(c).

DPR will accept written comments relevant to the modifications between November 15, 2012, and 5:00 p.m. on December 7, 2012. Written comments relevant to the modifications may be sent via e-mail <dpr12001@cdpr.ca.gov>; or may be directed to Ms. Linda Irokawa-Otani, Regulations Coordinator, Department of Pesticide Regulation, 1001 I Street, P.O. Box 4015, Sacramento, California 95812-4015. FAX: (916) 324-1452.

DPR has made sufficiently related changes to the text from that which was originally proposed.

- Amend section 6452(b)(1)(A) to reflect the correct section reference based on the proposed changes.
- Revise proposed section 6558 to require a licensed pest control adviser to identify the exception under section 6884(b) if the use of a high-volatile organic compound (VOC) nonfumigant product is recommended. This will assist in determining compliance during an enforcement audit.
- Revise proposed section 6577(b) to clarify that a licensed pest control dealer must indicate on the invoice that the information required in subsection (a) was provided to the operator of the property.
- Revise proposed section 6880(a) to clarify that designating a product as a high- or low-VOC compound only pertains to a product that contains abamectin, chlorpyrifos, gibberellins, or oxyfluorfen as the primary active ingredient. Also, "by weight" has been added to clarify that the product VOC emission potential is percent by weight as opposed to percent by volume.
- Revise the title of proposed section 6883 to remove "Pest Control Adviser." This title is misleading as this proposed section addresses the responsibility of the operator of the property in obtaining a recommendation, and not the requirements of a pest control adviser.

- Propose to add subsection 6884(b)(3) to allow an exception for use of high-oxyfluorfen products when using a low application rate although a recent University of California study, "Evaluation of Low VOC Oxyfluorfen Plus 'Kicker' Treatments for Postemergence Preharvest Weed Control in Nut Orchards" suggests that overall, low- and high-VOC formulations of oxyfluorfen can be similarly effective with respect to post-emergence weeds. However, this one study may not be conclusive, and some low-VOC products may prove to be less effective in some weed genera in orchards and vineyards. If this is the case, limiting use to low-VOC products may result in herbicide resistance in some weed genera. If additional studies confirm that low-VOC products are equally effective, this exception can be removed. This study has been added to the rulemaking file as a "Document Relied Upon."
- Propose to add subsections 6884(d) and (e) to allow the Director to propose removal of an active ingredient or crop through the rulemaking process while not affecting the ability to meet the pesticide VOC benchmark of 18.1 tons per day (tpd) in San Joaquin Valley ozone nonattainment area (NAA). Cropping and use patterns which make these four active ingredients and seven crops a priority for restriction may change over time and consequently, DPR may be regulating products and crops that are not major contributors to VOC emissions in the San Joaquin Valley. DPR is required to ensure that the control measures to obtain VOC emission reductions are stringent enough to meet the 18.1 tpd benchmark in order to comply with the anti-backsliding provision of the Clean Air Act section 172(e), or 42 U.S. Code section 7502(e). Examples of changes to use and emissions that may cause the Director to propose removal include: the active ingredient is being regulated due to other potential impacts, a new active ingredient is being used, a different or new crop is replacing other crops, or use has decreased due to pest resistance. Examples of temporary changes to use patterns that are unlikely to cause the Director to propose removal include: low pesticide product supply, low water supply, or crop loss.
- In proposed section 6884, add subsection (f) to allow the Director to make a determination to add an exception while not affecting the ability to meet the pesticide VOC benchmark of 18.1 tpd in the San Joaquin Valley ozone NAA if an acceptable study shows a greater amount of an active ingredient of a low-VOC product must be applied to achieve the same efficacy as a high-VOC product. There may be situations where low-VOC products or future active ingredients have uncertain efficacy or other problems, particularly for specialty crops. The inability to add an exception may lead to greater amount of product used, offsetting any VOC emission reductions from the lower emission potentials. More importantly, the amount of active ingredient applied would likely increase. The health and environmental risk of a greater amount of active ingredient could easily outweigh the benefits of any VOC reductions that might be achieved. Therefore, this section allows the Director to publish his decision to add an interim exception for use of a high-VOC product in the draft emissions report which is subject to a 45-day public comment period prior to implementation. This process expedites the allowance of a high-VOC product that would result in the application of less active ingredient. The interim addition would have to be finalized by the rulemaking process or would expire. As previously stated, DPR is required to ensure that the controls to obtain VOC emission reductions are stringent enough to meet the 18.1 tpd benchmark, complying with the anti-backsliding provision of the Clean Air Act section 172(e), or 42 U.S. Code section 7502(e).

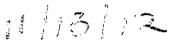
Current wording of the regulation is shown in normal type. Originally proposed additions are shown by underline. Originally proposed deletions are shown by ~~strikeout~~. New proposed deletions are indicated by *italics and strikeout*. New wording to be added by the modifications is shown in **bold double underline**.

All written comments received by 5:00 p.m. on December 7, 2012, which pertain to the indicated changes, will be reviewed and considered in this rulemaking. Please limit your comments to the modifications of the text.

This Notice of Modifications to Text of Proposed Changes and the text of modified regulations are also available on DPR's Internet Home Page <<http://www.cdpr.ca.gov>>.



Brian Leahy, Director
Department of Pesticide Regulation



Date